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Benjamin Giles
Xavier University

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Rethinking Church and State

America's Neutrality-Obsessed Separation, Its Formation, Its Compromised State, and the Way Forward

Benjamin Giles

Religion has long been a part of political and otherwise public life, usually in union with political power. This relationship has yielded great benefits for mankind, but it has also produced civil strife, religious warfare, and other harms. By the time of the American Founding, a new way of approaching this relationship emerged, one that sought to keep religious and political power separate. This paradigm became ingrained in the American consciousness and the federal Constitution after independence, but not the state law or American jurisprudence, at least until much later. Church-state separation was gradually integrated into these institutions over time, where it eventually interacted with liberal constitutional principles that seek to keep the government and Constitution neutral among ends. As a result, America now has a far different conception of church and state separation, where church and state are construed as two separate spheres that must not mix. Neutrality-obsessed church-state separation, as I will call this new conception, represents a fall from grace when compared to the Founders' separation and the separation I will advocate later. The first part of this paper traces those changes in American thinking on church-state separation that have led to its corruption.

After discussing how America has arrived, this paper will outline the challenges, particularly from the Religious Right, that neutrality-

obsessed church-state separation faces that render it unable to function properly before proceeding by outlining the need for a church-state relationship of some form.

Finally, this paper lays out a framework of principles for building a church-state relationship: a tension between democratic inclusion and freedom of religious conscience. The current balance, as this paper will argue, too greatly favors democratic inclusion, and so the scales must be moved to give greater favor to freedom of religious exercise.

I. The Gradual Formation of America's Neutrality-Obsessed Church-State Separation

The mere concept of separation between secular authority and religious authority is clearly a modern phenomenon, since such a separation would have been unthinkable for much of world history. Edel describes ancient thinking on church and state:

As tribes grew into nations and more complex political and religious organizations evolved, the distinction between political and religious decision making sharpened. For thousands of years, however, these two processes went hand in hand, with little thought given to the separation of church and state. On the contrary, any suggestion that the two be divorced would have been considered both heretical and treasonable: heretical in its challenge to established religious doctrine; and treasonous in its challenge to the authority of the ruler, whose position was based on the will of the god or gods that he and his people worshipped.¹

The state of affairs Edel describes prevailed in much of Europe and western thought for centuries, with an assortment of related problems. For example, England after the split with the Roman Church saw the monarch placed at the head of the new Church of England, a fusion of religious and secular power that persists to this day. When James II, a Catholic, took the English throne in 1685, tension arose that resulted

¹ Wilbur Edel, *Defenders of the Faith: Religion and Politics from the Pilgrim Fathers to Ronald Reagan* (New York: Praeger, 1987), 3.

in the Glorious Revolution, which deposed James II and placed William III, a Dutchman, on the throne. The Revolution might have been avoided had the union of English church and state not occurred. Since the English settled their North American colonies during this time of post-Henry VIII union of church and state, they carried a similar model to the New World, at least until the English Civil War.

The colonies formed before the English Civil War followed a model of union between secular and religious power that mirrored the English. Within England itself: three religious groups dominated (with one officially sanctioned church): Anglicans, Puritans, and Catholics. Hutson argues that these three groups ultimately shared a similar vision for religion and its relationship to the state: “All believed that the state must assist the orthodox church in its jurisdiction, promoting its doctrines and suppressing dissent from them by force, if necessary.”² As these groups began to colonize the eastern coast of North America, they took these principles with them. The Church of England was the official church in colonial Virginia,³ and the Puritans built their own quasi-utopian society in Massachusetts. In these and other early colonies, the *modus operandi* was to unify religious and secular power under an established church.

That model for colonization changed with the English Civil War, after which a new emphasis on pluralism and religious toleration emerged. Colonies established after the War possessed a greater degree of religious freedom than the older colonies. Among these new colonies was Pennsylvania, which became known for its successful use of religious pluralism. It was these colonies that could later provide a blueprint for the Founders of how religious pluralism could work in a society.⁴

The dual approach in the colonies created a landscape of church and state relations that was by no means uniform, and, in states with

² James H. Hutson, *Church and State in America: The First Two Centuries* (Cambridge: Cambridge University Press, 2008), 2.

³ *Ibid.*, 12–13.

⁴ *Ibid.*, 30–31, 38.

official churches, contradicted both the thinking of the Founders towards church-state separation and modern neutrality-obsessed separation. Hutson describes the diverse landscape:

The religious map of the colonies in 1689 [the founding date of the last of the thirteen colonies] resembled Joseph's coat with its multiple hues and colors. In some colonies the state compelled obedience to one official church; in others it was stripped of all power over citizen's consciences. There were colonies in which religion was regulated in some places but not in others. And there were colonies in which the brand of religion supported by the state refrained from regulating religion but signaled its intention to do so in the future.⁵

It was within this framework that the colonies functioned into the eighteenth century, and it was within this framework that the Founders and early American leaders were raised.

The Founders, chief among them Jefferson, supported a positive role for religion in democratic society, but were nonetheless concerned with limiting religion to keep both it and the state free of corruption. Reichley argues that religion was primarily appreciated for its role in developing citizens: "Almost all of the principal founders of the United States, including Thomas Jefferson, were convinced that the health of republican government depends on moral values derived from religion."⁶ Ragosta adds that for Jefferson, "the contribution of religion ... to the 'legitimate objects of society' should not be missed. This was a view of long standing with Jefferson and a belief broadly shared in early America."⁷ There is no doubt that the Founders saw religion as integral to the republic's success, yet they also had a clear sense that religion would depart from its beneficial role without a separation of church and state. Ragosta summarizes Jefferson's

⁵ Ibid., 1.

⁶ A. James Reichley, *Religion in American Public Life* (Washington: The Brookings Institution, 1985), 340.

⁷ John Ragosta, "Thomas Jefferson's Religion and Religious Liberty," in *Religious Freedom: Jefferson's Legacy, America's Creed* (Charlottesville: University of Virginia Press, 2013), 16.

thoughts on the matter: “He was convinced that any alliance between church and state would prostitute both and undermine the noble republican experiment, and it is clear that his concern went to both government interference with religion and religion’s interference with government.”⁸ Ragosta continues: “Critically, for Jefferson, both true religion and the republic depended upon liberty of the mind, including full religious liberty. Of necessity, such liberty included separation of church and state.”⁹

An immediate objection may be raised that if Jefferson argued for a separation of church and state, then he would be a hypocrite to advocate that Americans be taught religious morals. However, this objection is framed in a neutrality-obsessed mindset, and as Ragosta notes: “He was certainly emphatic that government should neither encourage nor endorse religion, but he never sought to purge religion ... from the public sphere.”¹⁰ Jefferson was concerned with the mixing of religious and secular power structures. He had no issue with those in the government and the populace being religious, since religion could instill virtues needed to preserve the republic. Such principles were enshrined in the First Amendment to the Constitution.

The idea of separation between church and state achieved its first constitutional expression in the First Amendment, which was carefully designed to keep the federal government from establishing religion but also from impeding free exercise of religion so as to preserve the purity of both the church and the state. As Michael Sandel notes: “The religious interest served by separation is in avoiding the corruption that comes with dependence on civil authority,” while “the political interest served by separation is in avoiding the civil strife that has historically attended church-state

⁸ Ibid., 35.

⁹ Ibid., 39.

¹⁰ John Ragosta, “Federal Control: Jefferson’s Vision in Our Times,” in *Religious Freedom: Jefferson’s Legacy, America’s Creed* (Charlottesville: University of Virginia Press, 2013), 170.

entanglements.¹¹ A series of interests competed in the formation of the First Amendment, since the issue of how the federal government interacted with religion would have serious consequences for both those states that had established churches and the project of religious pluralism. In the end, the First Amendment was formed by a compromise that confined its effects to the federal government:

As previously shown, the First Amendment “compromise” was between those who wanted to prevent the federal government from interfering with state establishments, but were more than happy to restrict federal authority severely; those who wanted to keep a distant federal government out of people’s lives, and supporters of Jefferson and Madison who wanted to prevent government interference in religion (sometimes overlapping groups).¹²

This view of church-state separation, where the federal government takes a *laissez-faire* approach to religion and the states are left more or less free to handle religion however they like, persisted until the passage of the Fourteenth Amendment. During that time, oddly enough, the states revoked the official status of their established religions.¹³ Despite this erosion, Americans remained very religious, enough so that Alexis de Tocqueville took serious note. Tocqueville’s 1835 edition of *Democracy in America* was written in two volumes: one devoted to American politics, the other to American civic institutions. However, Tocqueville actually planned three volumes: the first two as they appeared, and a third on religion in America.¹⁴ American religion continued to inculcate moral values for citizenship, and Americans themselves were very proud of both their religion and

¹¹ Michael Sandel, *Democracy’s Discontent: America in Search of a Public Philosophy* (Cambridge, MA: The Belknap Press of Harvard University Press, 1996), 61, 62.

¹² Ragosta, “Federal Control: Jefferson’s Vision in Our Times,” 182.

¹³ Edel, *Defenders of the Faith: Religion and Politics from the Pilgrim Fathers to Ronald Reagan*, 110.

¹⁴ James T. Schleifer, “Tocqueville, Religion, and Democracy in America: Some Essential Questions,” *American Political Thought* 3, no. 2 (Fall 2014): 254–255.

their church-state separation.¹⁵ During this period and throughout the nineteenth century, church influence in politics steadily waned, but the post-Civil War amendments to the Constitution, particularly the Fourteenth Amendment, made the federal government and courts more involved in American religion.

The Fourteenth Amendment was born of a recognition that the Bill of Rights provided for certain rights that may have been protected by the federal government, but not state governments. As a result, the Amendment was written in such a way that the courts interpreted it to extend the protections of the Bill of Rights to individuals when state law did not provide those protections.¹⁶ This move placed the federal government in a position to enforce a whole host of liberties, including religious liberty through neutral separation of church and state. Thus, the Fourteenth Amendment constitutionalized church-state separation, previously only a principle in the American mind.

Finally, the Fourteenth Amendment and subsequent judicial rulings began a time of further decrease in church influence in the state. Eventually, the Amendment and the rulings established the principle of aggressive neutrality between church and state. According to Michael Sandel, this system of neutrality finally triumphed in 1947, and it has persisted since. This system is problematic, as it coincides with the liberal value of the person as a freely choosing self.¹⁷ Under such a conception, all religious activities and beliefs ought to be the result of a free choice by an individual, and there is no room for beliefs or activities undertaken through duty. Thus, because all religious activities must be the result of a free choice by an individual, government must ensure complete neutrality between church and state.

¹⁵ Ibid., 257, 258.

¹⁶ Edel, *Defenders of the Faith: Religion and Politics from the Pilgrim Fathers to Ronald Reagan*, 111.

¹⁷ Sandel, *Democracy's Discontent: America in Search of a Public Philosophy*, 56, 62–63.

Now we can see the development of neutrality-obsessed separation, which represents a significant departure from the separation in early America. In early America, religion was a valuable institution for the formation of citizens and political leaders. It inculcated moral duties and principles and provided a restraint for excessive political passions. Now, as Reichley writes, the situation has changed: “In more recent times some Americans have come to regard religion as a kind of consumer value, like sports or travel, that should be available in a pluralist society but that makes no essential contribution to the moral foundation of democracy.¹⁸” The role of religion as a contributor to the “good objects of society” has eroded, and secular value systems have failed to fill religion’s old role. Yet, there are still many who feel a longing for a restored role of religion in America, and they have taken action towards that end. So, we arrive at the current state of dysfunctional tension in church-state separation in America: a missing part of the formation of citizens coupled with a tension between a conservative movement that seeks to restore religion’s old role and other interests that seek to preserve the status quo.

II. The Compromised State of Neutrality-Obsessed Church-State Separation

In the present day, the liberal effort of the last sixty to seventy years to enact neutrality-obsessed church-state separation now faces mixed results. In one sense, America’s sacred public centers are no longer religious, but civil. American public life is more and more focused around malls and other commercial venues, sports stadiums, and offices as opposed to churches. This preference for the civil can be seen in the fact that Al-Qaeda chose to attack symbols of American capitalism and consumerism, American politics, and American militarism as opposed to any targets with religious symbolism on September 11, 2001.¹⁹ In addition, the Supreme Court has regularly held that government must be neutral towards religion and vice versa

¹⁸ Reichley, *Religion in American Public Life*, 340.

¹⁹ Philip Gorski, “Religious Pluralism and Democratic Inclusion: The American Recipe for Peace,” *Society* 51, no. 6 (December 2014): 632.

in order to protect the free choices of individuals with regards to their religious beliefs. Such neutrality-obsessed separation has rarely been questioned judicially.²⁰ Beyond the judicial realm, Jefferson's idea of a wall of separation between church and state construed as complete neutrality now has a firm presence in the American consciousness, a victory for the current form of separation.

At the same time, liberal neutrality-obsessed separation has left the ability of American politics, law, and society to deal with matters of religion significantly wounded. This principle is nowhere more apparent than in the conflict between liberal neutral separation, which hinges on the freely choosing self, and the sense that many Americans still have of religious duty and obligation. These citizens do not hold their beliefs or behave as a result of completely free choice, and so a neutrality-obsessed government and court system will find it hard to ensure religious liberty for these Americans.²¹ The presence of difficulty in securing a basic liberty for citizens who feel bound by religious duty is a very serious problem, and it shows a flaw in current church-state separation, but it is not the only one. A new and ongoing conservative movement seeks to place religion in a public role similar to (or even greater than) the one it had in the early republic. This movement is commonly known as the Religious Right, and it poses a direct challenge to the very existence of neutrality-obsessed separation, or possibly any form of separation.

The greatest test of, or rather challenge to, modern neutrality-obsessed church-state separation began in the 1980s when a period of awakening brought religion and religious ideals back to the public sphere after they had been somewhat bracketed in the preceding decades. Evangelical Protestants drove this new period of awakening, in a reversal of their previous stance towards the issue. Prior to the 1950s, evangelicals largely supported church-state separation, but that support withered in the 1950s through the 1970s as a reaction to events ranging from the 1954 *Brown* case to the election of John F.

²⁰ Sandel, *Democracy's Discontent: America in Search of a Public Philosophy*, 58–59, 63.

²¹ *Ibid.*, 65.

Kennedy and an assortment of school prayer and Bible study Supreme Court cases in the decades leading up to the 1980s.²² Dissatisfied with the moral state of the country and its politics, evangelicals and others began to assert their consciences in American politics and culture, including through the political activities of ministers like Pat Robertson.²³ This new political and religious movement, which persists to this day, came to be known as the Religious Right.

By the time of Ronald Reagan's presidency, this revivalist project thrived and has continued to do so since. At the core of this movement is the belief that the law of God should be enacted in America, and that believers ought to unleash their full arsenal of political tools to realize this vision.²⁴ As the epilogue of his book *Clear and Present Danger: Church and State in Post-Christian America*, author William Stanmeyer writes "A Letter to a Christian Citizen," virtually a manifesto of the new revivalism. Stanmeyer expresses the new revivalist dedication so clearly (and, in his fundamentalist devotion, so alarmingly), that he is worth quoting at length:

Like an army sitting still, we become an easy target. If we do nothing about the economic, political, and legal rules that structure our public life and much of our private lives, we abandon those rules by default to the manipulation of people who have a theological agenda and a social vision hostile to our faith. We can no more stand aloof, above the fray, when "good" or "bad" laws are made than we could walk by on the other side of the road when we come upon a traveler beaten, robbed, and left half-dead in the ditch. We are called to intervene.²⁵

²² Ragosta, "Federal Control: Jefferson's Vision in Our Times," 181.

²³ Edel, *Defenders of the Faith: Religion and Politics from the Pilgrim Fathers to Ronald Reagan*, 136.

²⁴ *Ibid.*, 124.

²⁵ William A. Stanmeyer, *Clear and Present Danger: Church and State in Post-Christian America* (Ann Arbor: Servant Books, 1983), 194.

Of particular note in this passage is the metaphor Stanmeyer uses of America as a mauled traveler, drawn from the parable of the Good Samaritan. For Stanmeyer and other new revivalists, asserting religious beliefs in politics is about aiding an ailing entity. To them, it is a benevolent thing to do, but in fact their fundamentalist devotion to their beliefs poses a direct threat to both neutrality-obsessed church-state separation and democracy as a whole.²⁶

Yet, despite the problems posed by this ideology, it has had a significant impact on American politics. Those of religious conviction dominated (and still dominate) the pro-life movement and similar social movements.²⁷ Court cases involving religious liberty, prayer in schools, religious expression in public spaces and institutions, and questions of the scope of both the Establishment and Free Exercise Clauses of the First Amendment are a frequent occurrence and they garner a great deal of public attention.²⁸ Most alarmingly of all, the past twenty years have seen an expansion of legislative moves at the state level to bypass the federal government and the stricter neutrality practices there in order to enact laws friendlier to religion. Between 1995 and 2009, various state legislatures around the country passed 87 different laws along these lines.²⁹ These laws are varied in both language and effects, but they nonetheless challenge the idea of a government whose role is limited with regards to religion.

²⁶ Robert Brathwaite and Andrew Bramsen, "Reconceptualizing Church and State: A Theoretical and Empirical Analysis of the Impact of Separation of Religion and State on Democracy," *Politics & Religion* 4, no. 2 (August 2011): 233; Edel, *Defenders of the Faith: Religion and Politics from the Pilgrim Fathers to Ronald Reagan*, 137.

²⁷ Edel, *Defenders of the Faith: Religion and Politics from the Pilgrim Fathers to Ronald Reagan*, 128, 131; Gorski, "Religious Pluralism and Democratic Inclusion: The American Recipe for Peace," 627.

²⁸ Ragosta, "Federal Control: Jefferson's Vision in Our Times," 169.

²⁹ Keith Gunnar Bentele et al., "Breaking Down the Wall between Church and State: State Adoption of Religious Inclusion Legislation, 1995-2009.," *Journal of Church and State* 56, no. 3 (September 2014): 503-504, 508.

So it can be seen that the movement represented primarily by the Religious Right represents a significant breach in neutrality-obsessed church-state separation and presents that separation with its greatest challenge to date. The pervading church-state separation and the new revivalism are at an impasse. Both ideologies are opposed in such a way that they cannot seem to be able to agree on the proper relationship of religion to the state and culture.

Yet, it is absolutely necessary to find a proper balanced relationship between church and state. The Founders correctly believed that religion could contribute to the formation of morals necessary in a good citizen. Indeed, in a time hostile to tradition, when these values that reinforce democracy can no longer rely on custom to persist, religion is more important than ever in its role as their incubator.³⁰ In addition, there is no dismissing the power of religion in world affairs, and attempts to build the good society using purely secular means have been no more successful than attempts to do so using religious means. Religion, simply put, is here to stay, and it is a force that must be accounted for.³¹

At the same time, government still must take caution in regards to religion, since there are dangers that come with giving religion too much power in society. Certain aspects of religion, especially their tendencies to make absolute truth claims, can be antithetical to democracy. These aspects are resistant to the democratic mindset, where consensus and compromise is key to successful governing, and it is virtually impossible to realize one's full agenda.³²

Thus, we are left with a complex paradox that defies easy resolution. On the one hand, religion is crucial as an incubator for values and institutions that form the backbone of a democratic society, so it must be given at least some room. On the other hand, religion possesses the

³⁰ Reichley, *Religion in American Public Life*, 348; Thomas G. Walsh, "Religion, Peace, and the Post-Secular Public Sphere," *International Journal on World Peace* 29, no. 2 (June 2012): 44.

³¹ Walsh, "Religion, Peace, and the Post-Secular Public Sphere," 35–36, 59.

³² Reichley, *Religion in American Public Life*, 348–349.

tendency to run wild in ways that could do more harm than good, so we must take care to check its power. Trying to balance these ideas with a greater emphasis on checking religion's power has produced mixed results, so a new balance is needed.

III. The Case for Greater Deference to Free Religious Exercise

We have now demonstrated that contemporary neutrality-obsessed church-state separation is a flawed system, and while it may have a future, it does not deserve one. Therefore, we are left with the task of outlining a more effective way to construct our church-state separation. In doing so, we are presented with the challenge of properly balancing the duality of principles at the center of any church-state arrangement.

The question at the core of the quest for an effective church-state separation is one enshrined in the two clauses of the First Amendment that pertain to religion: the Establishment Clause and the Free Exercise Clause. These two clauses reference two warring principles: democratic inclusion through the prevention of any governmental religious establishment and protection for religious exercise as well as the expression of religiously informed consciences through the Free Exercise Clause. These principles, when applied without restraint, are mutually exclusive. If an emphasis is placed only on democratic inclusion, then religious expression in both consciences and policy must be suppressed and kept out of any public processes to avoid exclusion. In a similar way, complete freedom of religious conscience facilitates the creation of policies and court rulings that clearly favor a specific belief set, thereby excluding entire sets of religious beliefs and morals, a practice neither desirable nor practical in a multicultural democratic society such as ours.

Forming any relationship between church and state involves striking a balance between these two principles, and an optimal balance leans slightly in favor of religious conscience so that religion can be used to inculcate moral virtues that are beneficial to democracy while maintaining checks on religious conscience to allow government to function and prevent the establishment of a theocracy. However, even

once such a relationship is established, it must be constantly reevaluated, as the freedom of religious expression can produce new variants of religions, and democratic inclusion changes with conceptions of citizenship.³³ The final part of this paper will argue that giving greater favor to the freedom of religious exercise and religious conscience is a reliable solution for the current problems with church-state separation, but it is not to be taken as a permanent solution.

The current liberal form of neutrality-obsessed church-state separation, to its detriment, places great emphasis on democratic inclusion as opposed to expression of religious conscience. This emphasis is based on the worry that giving religious conscience too much power in the state can work against democratic principles. Such a worry is not unfounded, since most of the world's religions tend to make absolute truth claims along with claims that any other contrary doctrines from any other religious traditions are absolutely false. This viewpoint is antithetical to democracy in principle because democratic governing takes place as a result of deliberation and compromise; activities rendered irrelevant in the presence of absolute truth claims.³⁴ The threat of this viewpoint is very real, as evidenced by the stances, actions, and popularity of the Religious Right, which seeks to make government legislation reflect Biblical moral teachings.

In response to this threat, neutrality-obsessed separation greatly favors protecting democratic inclusion by seeking to keep religion and religious conviction bracketed from public life. However, even if this move was justified in creating an effective church-state separation, it fails to keep religion out of politics and public life. (Indeed, Gorski goes so far as to credit the emergence of the

³³ Gorski, "Religious Pluralism and Democratic Inclusion: The American Recipe for Peace," 634.

³⁴ Brathwaite and Bramsen, "Reconceptualizing Church and State: A Theoretical and Empirical Analysis of the Impact of Separation of Religion and State on Democracy," 233.

Religious Right to the prevalence of neutrality-obsessed separation.³⁵) Since the role of a legislator is to represent a constituency and the viewpoints of those constituents, legislators from areas where the Religious Right has a strong presence can actually gain electoral benefits by bringing issues of church and state to the fore of legislative activity. Beyond the constituency scale, many recent Republican presidential candidates have had to cater to the Religious Right, since conservative evangelicals form a significant contingent of Republican primary voters that candidates need to win over for the Party's nomination.³⁶

Further, neutrality-obsessed separation, by seeking to bracket religion from public life, stifles the good elements of religion for democracy by taking away key components of religious practice, leaving American religion too compromised to effectively perform its role as a moral incubator. Privatized American religion as it is now treated separates from its uses of ritual, place, and doctrine, elements that possess significant public and social aspects and are normally considered essential to a religion's character.³⁷ As for the beneficial role religion can play, Jefferson and many others saw it as a potent force for inculcating and sustaining moral virtue in citizens. Jefferson and Madison wanted a secular government with church-state separation, but they also clearly wanted a religiously engaged citizenry and government where religious convictions were common and frequently expressed.³⁸ The difficulty we encounter is that many

³⁵ Gorski, "Religious Pluralism and Democratic Inclusion: The American Recipe for Peace," 624.

³⁶ Ted G. Jelen, "The Future of the Church-State Debate," in *To Serve God and Mammon: Church-State Relations in American Politics*, 2nd ed. (Washington, DC: Georgetown University Press, 2010), 136–137, 141.

³⁷ Gorski, "Religious Pluralism and Democratic Inclusion: The American Recipe for Peace," 631.

³⁸ John Ragosta, "Federal Control: Jefferson's Vision in Our Times," in *Religious Freedom: Jefferson's Legacy, America's Creed* (Charlottesville: University of Virginia Press, 2013), 185–186, 188; A. James Reichley, *Religion in American Public Life* (Washington: The Brookings Institution, 1985), 340.

of the moral virtues that Jefferson and Madison believed religion could cultivate and maintain are based in doctrine or tradition of some other form, elements that are now compromised in American religion, primarily due to its bracketing by neutrality-obsessed separation.

It seems obvious, after tracing all of the faults in American religion as the result of a church-state separation that places a great emphasis on protecting democratic inclusion, that the metaphorical scales are in fact out of balance, and that they must be shifted to give slightly more favor to protecting religious conscience and religious exercise. Beyond simply attempting to alleviate some current problems American church-state separation faces, there are also other practical reasons for such a shift. First, American religion is becoming an increasingly decentralized and varied phenomenon. The advent of so-called “New Age” spiritualities and individual spiritualities has introduced a great deal of subjectivity into American religion combined with an increasing distaste for established religions, leading to the point that American citizens now hold a plethora of different religious beliefs. Moreover, some of these beliefs are radically different from the Christianity that was historically prevalent in the country.³⁹

As the spectrum of American religion morphs and comes to encompass non-traditional belief systems, the number of *de facto* religious minorities in America grows. These minorities can be quite small, so small that they might be left out of the representative system or ostracized for what might be deemed bizarre or dangerous beliefs. Thus, the potential for exclusion from the democratic process grows with the decentralization of American religion, and so the government is obligated to intervene in some way, probably by becoming more accommodating to religious conscience. This ultimately means that free religious exercise may occasionally require government support,⁴⁰ an egregious violation of neutrality-obsessed separation, but a necessary one if the state chooses to continue its rightful practice of ensuring equal participation in the democratic system.

³⁹ Jelen, “The Future of the Church-State Debate,” 143.

⁴⁰ *Ibid.*, 144.

Second, free religious exercise in principle requires that citizens be able to act on their religious consciences in arenas of public life. As stated before, religion exerts a powerful influence on beliefs and morals, in some cases being the primary or even sole influence in their formation. Citizens whose beliefs have been informed by a religious tradition often take these beliefs very seriously, therefore to bracket such beliefs or morals by virtue of their being based in religion is an act of exclusion against those whose consciences were formed in a strongly religious context. As this paper has emphasized repeatedly, religious conscience must be checked, but pure neutrality-obsessed separation has no such check, preferring to simply bracket religious conscience from public life. Free religious exercise simply cannot be protected when religious conscience is completely bracketed.

What this paper has laid out is the need for a shift of emphasis and a rethinking of the way the United States conducts and conceives of its church-state separation. The liberal neutrality-obsessed separation born of American policy and jurisprudence since the end of World War II simply cannot stand, since it leaves American religion bracketed and too compromised to be of benefit. Religion, a potent force for the inculcation and preservation of first principles and civic virtues, is almost unable to perform this purpose because religious conscience and religion itself has been bracketed from American life and broken down, losing some of its crucial characteristics. What is needed is a fundamental shift in jurisprudence and government policy that will give more deference to religious conscience, but not to too great an extent. Such a shift will allow religious conscience and religious influence to return to the public sphere, where it can continue to work towards the purpose that Jefferson and many of the Founding Fathers wanted it to fulfill. While the circumstances in which Jefferson and the Founding Fathers thought about religion are long gone, their principles may still very well provide one of the best frameworks for church and state today.

To be sure, a shift in values pertaining to American religion is a change that possesses a cultural facet as well as a governmental one,

rendering such a shift a difficult and likely time-consuming process. The processes that built neutrality-obsessed separation took decades, if not centuries, to unfold, and so it is realistic to expect their reversal to take at least as long. However, it is apparent after analyzing the flaws of neutrality-obsessed separation that such a change must occur, regardless of the time spent enacting it. At the same time, this change has many variables, and so the details are far too complex for a paper like this. Such questions will be debated by, researched, and argued over by policy experts, lawmakers, and judges for decades to come.

Nevertheless, this shift is possible, but it remains important to keep in mind that the outline of a solution this paper proposes, while it is a good one that can work to fix many of neutrality-obsessed church-state separation's problems, cannot be expected to permanently solve the issue of church and state. The history of this relationship is a long and complex one, and if it possessed an easy solution, that solution would likely have been found by now. Due to the representative nature of politics and the myriad of public opinions concerning religion in the electorate, we can expect to see issues of religion come up repeatedly in the political process, since legislators and administrators representing these various beliefs about religion are bound to emerge over time. So, for the foreseeable future, the debate over church-state separation will continue as it has for centuries, if not millennia, with the scales holding the two competing principles of democratic inclusion and freedom of religious exercise and conscience moving back and forth. However, if American democracy hopes to collect the benefits from a religious citizenry while preserving the positive aspects of her democracy, the scales must tilt slightly more in favor of freedom of religious conscience in the end.

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